

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

|                                  |   |                                  |
|----------------------------------|---|----------------------------------|
| BIDZIRK, LLC, DANIEL G. SCHMIDT, | ) |                                  |
| III, and JILL PATTERSON,         | ) |                                  |
|                                  | ) |                                  |
| Plaintiffs,                      | ) |                                  |
|                                  | ) |                                  |
| v.                               | ) | Civil Action No. 6.06-CV-109-HMH |
|                                  | ) |                                  |
| PHILIP J. SMITH,                 | ) | AMENDED COMPLAINT                |
|                                  | ) |                                  |
| Defendant.                       | ) | Jury Trial Demanded              |

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COMES NOW BidZirk, LLC (“BidZirk”), Daniel G. Schmidt, III (“Schmidt”) and Jill Patterson (“Patterson”), Plaintiffs in the above-captioned action, and make and file this their amended complaint, and show the Court as follows:

FOR A FIFTH CAUSE OF ACTION- Defamation

37.

Plaintiffs reallege and incorporate by reference the allegations set forth in Paragraphs 1-36 of their original complaint as though set forth fully herein.

38.

The Court may exercise jurisdiction over Plaintiffs’ claim for defamation through the Court’s inherent supplemental jurisdiction.

39.

Since Plaintiffs' initial complaint was filed, Defendant published and continues to display statements on his blog that tend to impeach the honesty, integrity, virtue or reputation of Plaintiffs, which caused and continue to cause injury to Plaintiffs' business or profession. Defendant's publication alleges that Plaintiffs improperly tampered with Google.com search results to prevent internet users from viewing Defendant's article. See Exhibit 1.

40.

On June 7, 2006, Defendant published and continues to display statements on a new website, [www.kingkongwrong.blogspot.com](http://www.kingkongwrong.blogspot.com), which caused and continue to cause injury to Plaintiffs' business or profession. Defendant's publication at [www.kingkongwrong.blogspot.com](http://www.kingkongwrong.blogspot.com) also alleges that Plaintiffs improperly tampered with Google.com search results, and also, inter alia, alleges that BidZirk has violated Defendant's constitutional rights, and that Plaintiffs' counsel has "bullied" Defendant "on an almost daily basis." See Exhibit 2.

41.

Plaintiffs own and operate a well-known company in Greenville and other areas, and enjoy a strong reputation for fair dealing.

42.

Defendant's statements were published with actual or implied malice, and with the intent wantonly to injure Plaintiffs in their business or profession.

43.

Defendant's statements are false, and were published on the internet, at a publicly-accessible website, [www.jackwhispers.blogspot.com](http://www.jackwhispers.blogspot.com), during May 25, 2006 and thereafter, and on [www.kingkongwrong.blogspot.com](http://www.kingkongwrong.blogspot.com) during June 7, 2006 and thereafter.

44.

Plaintiffs have suffered and are entitled to recover special damages in an amount to be proved at trial, and have suffered damages in the form of embarrassment, humiliation and mental injury as a result of the injury to his reputation inflicted by Defendant's publication of defamatory statements.

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

WHEREFORE, BidZirk, Schmidt and Patterson pray:

- (a) that Plaintiffs have judgment against Defendant for defamation as set forth in Count V of their amended complaint, in an amount to be proven at trial;
- (b) that all costs of this action be cast upon Defendant;
- (c) for a trial by jury; and
- (c) for such other and further relief as the Court deems mete and just.

This 28<sup>th</sup> day of June, 2006.

/s/ Kevin M. Elwell

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KEVIN M. ELWELL  
USDC Bar No. 9706

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Attorneys for Plaintiffs BidZirk,  
LLC, Daniel G. Schmidt, III and Jill  
Patterson

**EXHIBIT 1**

“SERMA Gives Others Goose Bumps On The Derma”

A MySpace comment in response to my post on SERMA (Search Engine Reputation Management) yesterday:

**SERMA and Silencing the Consumer**

I read your blog on SERMA and thank you for posting it. I had a similar experience. My website, the Toonces Project, publicized the State Veterinary Board's findings against a veterinarian who was found guilty of wrongdoing in a case involving my cat. The findings are a matter of public record. For the first month or so my site was coming up on the first page of searches for the vets name, the hospital name, and the term veterinary malpractice. Now it does not come up at all anywhere searching for those terms. It hasn't been removed by Google, because if you search "The Toonces Project" it still comes up, also it still comes up on Yahoo. Also, the search results that come up when you search my name have been reorganized in a way that I'm sure someone else might think is negative. I know the search results are being manipulated.

I'm not sure what consumers who have turned to the internet as a way to share information -- including negative information -- about businesses are going to do if the internet ends up being owned by business.

This is where it is heading

Can we "OUT SERMA" SERMA? If we feel we are being SERMA'd what can we do?

I just applied to be your friend. Read my blog on veterinary malpractice, and visit my now-unsearchable on Google site, the toonces project at [www.thetooncesproject.com](http://www.thetooncesproject.com)

I went to the website and found the following:

**Dr. Marc Katz, DVM, of The Kindness Animal Hospital in Wheaton, Maryland**

**Found in Violation of the Veterinary Practice Act by the MD State Board of  
Veterinary Medical Examiners**

**Veterinary License Suspended (suspension stayed)**

**Six Months Probation Effective 2/03/2006**

Honestly, the best way to beat a SERMA'd site is to do what I have just done. My site is 3 million slots higher than your site ... so ... maybe putting it here will get these terms back into a search.

I posted to the Google Groups board in hopes that Google would respond. It usually takes them 3-4 weeks as I posted about a different but related topic before.

Further, my investigation turns up that this is most likely legal **BUT** they are most likely using illegal methodology to perform the function of censoring or "pushing". I believe they have a "gateway" page which is specifically forbid by Google.

The other thing you can do is change the wording and rearrange the wording of the website and article as it appears that they target specific layouts.

One former hospital marketing department executive that I showed this (SERMA) to was absoulutely stunned. She said it has so many implications for spin control on so many levels. Doctors could suppress malpractice, politicians could suppress "unethical" behaviour ....

My biggest beef in my particular instance is that I had a federal district court rule that my article could stay up on the internet and **Bidzirk** removed it any way (as best they could) ... which may be a violation of court order.



SEARCH THIS BLOG

GET YOUR OWN BLOG

FLAG

NEXT BLOG»

SEARCH ALL BLOGS

BlogThis!

# KING KONG WRONG

WEDNESDAY, JUNE 07, 2006

**Welcome To KINGKONGWRONG.COM!**

Did you see a guy in a gorilla suit protesting today? Well, if you did and you made it here ... here's what the gorilla is upset about:

*eBay Dropoff Stores*, also called *eBay listing assistants*, are popping up all over the United States. Their purpose is to take your items, take pictures, list your item on eBay, and then send you a percentage of the final ending bid.

These stores are largely unregulated. Many states are actively debating these businesses as more and more people get ripped off.

Last year, "the guy behind the gorilla mask" used an eBay Dropoff called **Bidzirk**. All in all, **Bidzirk** took in somewhere between (an appraised) \$22,000 to \$35,000 in eBay inventory from business partners and myself. **Bidzirk** managed to get just short of \$8000 for

ABOUT ME

KINGKONGWRONG

VIEW MY COMPLETE PROFILE

LINKS

Problems with eBay Dropoff Stores:  
Bidzirk

Bidzirk: Search Engine Manipulation  
How Bad Businesses Surpress Bettter  
Business Bureau Reports

Auctionbytes Forum on eBay Dropoff  
Profitability

RipOff Report for Bidzirk

Strategic Outlook: Analysis Of  
Bidzirk Lawsuit/Injunction Ruling  
A Role For eBay Dropoffs

PREVIOUS POSTS

Welcome To  
KINGKONGWRONG.COM! Did you  
see a guy...

ARCHIVES

June 2006



all of this inventory and then split it with my partners and I 50/50... which I in turn had to split 50/50 with my partners. This has caused me and my partners severe financial strain and cost me many business relationships. Bidzirk got less than average prices for the merchandise when they advertise on the BIDZIRK.COM website the following:

*"We founded Bidzirk after realizing that individuals, businesses, and fundraising organizations needed a fast and easy way to sell their items and liquidating assets online for top selling prices.*

*Bidzirk SM has many years of experience in business, customer service, creativity, and technology, to provide online auction expertise, facilitating photographs, listing descriptions, and shipping, to maximize selling prices and inventory turnover."*

Bidzirk failed to even ATTEMPT to sell over 1000 items given them therefore causing time sensitive technology items to decrease in value while in their possession for over 6 months. Bidzirk also failed to provide my partners and I with timely payments. Full payment was delayed for as long as 4 months (16 weeks) without interest or acceptable explanation.

Since I have been writing for a consumer advocacy site for the past 4 years that has received numerous awards and recognition called Jackwhispers: Fix Your Thinking that covers eBay and Apple Community drama (yeah it's niche) ... I decided to do a full length news report on eBay dropoff stores while relating my personal experience with **Bidzirk**.

Well, as it turns out ... **Bidzirk** wasn't pleased with the article so they decided to violate my constitutional rights and have sued me for "defamation" and violation of their trademark. This action against me has caused me severe financial strain and has consumed a lot of my time. I have not been able to dedicate myself to my full time job as an Apple Computer Tech and maintain a healthy personal or social life due to **Bidzirk's** action against me. I am being

bullied by the opposing attorney on an almost daily basis ... and inundated with paperwork because the case is federal.

I make decent money, but I'm not wealthy enough to have an attorney on retainer or to pay for the massive amount of litigation necessary for a lawsuit of this magnitude. I stand in opposition to the few Pro Bono attorneys that would normally take a case such as this one.

So, the purpose of this exercise is to show YOU what you can do as the little guy and help me fight the erosion of our constitutional freedom of speech ... something our forefathers wrote as "a god given, unalienable right".

**A couple of notes:**

\* To any business surrounding a protest location, I am sorry for this trouble. I hope that I served to bring traffic to you!

\* Before planning any protest/picketing act make sure you obtain a permit from your local municipality. I have one in case you were wondering.

\* Please feel free to comment here if you have had experiences (positive or negative) with Bidzirk or iSoldit or any other eBay dropoff location.

**To see the story go to:**

You Gotta Be Berserk To Use An eBay Listing Company

Stay tuned to this site for more protest dates and opportunity to protest against a business in your area!

POSTED BY KINGKONGWRONG AT 7:56 AM 0 COMMENTS

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III, and JILL PATTERSON, )

Plaintiffs, )

v. )

PHILIP J. SMITH, )

Defendant. )

Civil Action No. 6:06-CV-109-HMH

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing AMENDED COMPLAINT upon the following parties by depositing same in the United States Mail in a properly-addressed envelope with adequate postage affixed to:

Philip J. Smith  
601 Cleveland Street  
Apartment 5-C  
Greenville, South Carolina 29601

This 28<sup>th</sup> day of June, 2006.

/s/ Kevin M. Elwell

KEVIN M. ELWELL  
USDC Bar No. 9706

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